Last Updated October 1, 2013

CUMULATIVE DIGEST

CH. 6
BAIL

Top

§6-1
Generally

People v. Maldonado, 402 Ill.App.3d 411, 930 N.E.2d 1104 (1st Dist. 2010)

Under 725 ILCS 5/110-14, a defendant is entitled to a credit against a "fine" for each day of pretrial incarceration on a "bailable" offense. Under Illinois law, all offenses are "bailable" except for certain offenses specified in 725 ILCS 5/110-4.

As it applies to this case, §110-4 prohibits bail if the "proof is evident or the presumption great that the defendant is guilty of the offense" and the offense is either: (1) a capital offense, or (2) a felony offense for which conditional release is not authorized. For the latter class of offenses, the State must also establish in a hearing that release of the defendant would pose a real and present threat to the physical safety of one or more individuals.

Because the defendant was granted bail in the trial court, it was clear that the State failed to satisfy its burden to show that the offense was non-bailable. Because the offense was bailable, defendant was entitled to credit against his fines. (See also, **SENTENCING**, §45-16(b)).

(Defendant was represented by Assistant Defender Levi Harris, Chicago.)

People v. Molidor, 2012 IL App (2d) 110006 (No. 2-11-0006, 5/25/12)

A motion for return of bond is governed not by Supreme Court Rule 604(d), but by 725 ILCS 5/110-7(f), which authorizes the return of 90% of the bond deposit when the conditions of bond have been performed and the defendant has been discharged from all obligations. Because §110-7(f) does not establish a time limitation for moving for return of the bond, the Appellate Court did not lack jurisdiction to consider an appeal from denial of a motion to return bond although the defendant failed to file his motion within 30 days of sentencing.

(Defendant was represented by Assistant Deputy Defender Bruce Kirkham, Elgin.)

People v. Williams (Edwards), 2012 IL App (2d) 111157 (No. 2-11-1157, 7/25/12)

Under 725 ILCS 5/110-7(a), a person who posts bail for a criminal defendant must receive written notice that the bail may be used to pay costs, fees, fines, attorney's fees, or restitution, and that all or part of the deposit may be lost. Section 110-7(a) also provides that the person who posts bail must be informed that if the defendant fails to comply with the conditions of the bond, the bond may be forfeited. The written notice must be distinguishable from the surrounding text, in bold type or underscored, and in a type size that is at least two points larger than the surrounding type. (725 ILCS 5/110-7(a)).

1. The court acknowledged that §110-7(a) creates a mandatory requirement concerning the notice to be given to a person who posts bail, but noted that even a mandatory provision may be satisfied by substantial compliance where: (1) the purpose of the statute was achieved despite the absence of strict compliance, and (2) the petitioner suffered no prejudice from the lack of strict compliance.

2. The petitioner posted $50,000 bond for a relative who was charged with ten counts of theft. The text of the written notice provided to the petitioner contained the statutory warnings in a "boxed-off" area on the bottom left corner of the page. Although the notice did not strictly comply with §110-7(a) because there were other bolded words on the page and the type was not two points larger than the surrounding text, the court concluded that the two-part test set out above was satisfied. Thus, the notice complied with §110-7(a).

First, the purpose of §110-7(a) is to place third persons on notice that they may lose money which they post as bond for criminal defendants. This purpose was served where the notice section of the form was "boxed-off" in a corner of the page, the bolded heading in the box stated: **"NOTICE TO PERSON PROVIDING BAIL BOND *OTHER THAN THE DEFENDANT*,"** and the box contained a warning that the bond could be used for costs, fees, or restitution. The notice also stated that the deposit could be forfeited. The box also contained an area for the petitioner's signature, address, and phone number. The court concluded that under these circumstances, any variations from the form required by §110-7(a) were *de minimis* and did not prevent the petitioner from being placed on notice that his bond deposit might not be returned.

Turning to the second part of the two-part test, the court concluded that the petitioner was not prejudiced by the failure to strictly comply with the statute. First, the record showed that the petitioner posted bond because he believed the defendant to be innocent, not because he was unaware of the possible drawbacks of posting bond. Second, the petitioner was present at a hearing to determine the source of the bail money, when the possibility that the money would not be returned was discussed. Having received actual notice that his money might not be returned, the petitioner cannot claim to have been prejudiced by the failure of the form to strictly comply with statute requirements.

The court affirmed the trial court's order applying the $50,000 bail bond to restitution.

Top

§6-2
As Fund for Costs, etc.

People v. Devine, 2012 IL App (4th) 101028 (No. 4-10-1028, 9/6/12)

In counties with population of less than three million, the trial court has discretion to use bail from a criminal case to satisfy the defendant's financial obligations in other cases, including child support, so long as court costs have been paid in the case in which the bail was posted. Although 725 ILCS 5/110-7(f) specifically mentions the use of bond for child support only in counties with population of more than three million, the court found that trial courts in smaller counties have discretion to direct unused bond to outstanding child support obligations.

(Defendant was represented by Assistant Defender Martin Ryan, Springfield.)

People v. Gutierrez, 405 Ill.App.3d 1000, 938 N.E.2d 619 (2d Dist. 2010)

The trial court may order as a condition of bond that defendant be supervised by a pretrial services agency, probation department, or court services department, and defendant may be assessed fees for such services. 725 ILCS 5/110-10(b)(14) and (14.3). No such fee can be assessed if defendant is never released on bond, even though the court ordered the supervision and the supervision fee as a condition of bond.

(Defendant was represented by Assistant Defender Jaime Montgomery, Elgin.)

Top

§6-3
Violations - Forfeiture

People v. Costa, 2013 IL App (1st) 090833 (No. 1-09-0833, 9/27/13)

To sustain a conviction for violation of a bail bond, the State must prove beyond a reasonable doubt that: (1) defendant forfeited bail; (2) defendant failed to surrender within 30 days after the bail was forfeited; and (3) defendant's failure to surrender was willful. 720 ILCS 5/32-10(a). If a defendant is incarcerated and unable to appear in court, his failure to appear cannot be deemed willful. **People v. Ratliff**, 65 Ill. 2d 314, 357 N.E.2d 1172 (1976).

Defendant failed to appear on his court date and was arrested by the Honolulu police 27 days later on a bond-forfeiture warrant. Defendant's failure to surrender within the statutory 30 days cannot be deemed willful because he was in custody and unable to appear in court. Whether at the time of his arrest he intended to surrender within the 30 days is immaterial.

The court reversed defendant's conviction.

(Defendant was represented by Assistant Defender Kristen Mueller, Chicago.)

Top

§6-4
On Appeal

Top